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January 22, 2020

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Duke Energy Carolinas, LLC's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) – S.C. Code Ann. Section 58-41-20(A)

South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Duke Energy Progress, LLC's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) – S.C. Code Ann. Section 58-41-20(A)

Docket Nos. 2019-185-E and 2019-186-E

Dear Ms. Boyd:

Please find enclosed for filing the *Response to Duke Energy's Petition for Reconsideration* of the South Carolina Coastal Conservation League and the Southern Alliance for Clean Energy. Pursuant to the electronic service agreement in this docket, we are serving a copy of these filings on all parties of record.

Please contact me if you have any questions concerning this filing.

Sincerely,

/s/ Lauren J. Bowen

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Admitted Pro Hac Vice

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STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2019-185-E
DOCKET NO. 2019-186-E

In the Matter of:)
South Carolina Energy Freedom)
Act (H.3659) Proceeding to)
Establish Duke Energy Carolinas,)
LLC's Standard Offer, Avoided)
Cost Methodologies, Form)
Contract Power Purchase)
Agreements, Commitment to Sell)
Forms, and Any Other Terms or)
Conditions Necessary (Includes)
Small Power Producers as Defined)
in 16 United States Code 796, as)
Amended) - S.C. Code Ann.)
Section 58-41-20(A),)
and)
South Carolina Energy Freedom)
Act (H.3659) Proceeding to)
Establish Duke Energy Progress,)
LLC's Standard Offer, Avoided)
Cost Methodologies, Form)
Contract Power Purchase)
Agreements, Commitment to Sell)
Forms, and Any Other Terms or)
Conditions Necessary (Includes)
Small Power Producers as Defined)
in 16 United States Code 796, as)
Amended) - S.C. Code Ann.)
Section 58-41-20(A))
)

**SOUTHERN ALLIANCE FOR CLEAN
ENERGY AND SOUTH CAROLINA
COASTAL CONSERVATION LEAGUE'S
RESPONSE TO DUKE ENERGY'S
PETITION FOR RECONSIDERATION**

Introduction

The South Carolina Coastal Conservation League (“CCL”) and Southern Alliance for Clean Energy (“SACE”) (collectively, the “Conservation Groups”) respond herein to the Petition of Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”, collectively “Duke Energy” or the “Companies”) for Reconsideration of Order No. 2019-881(A). Duke Energy filed its petition on January 13, 2020.

Specifically, Conservation Groups respectfully request that the Commission deny Duke Energy’s first request for relief to “strike ... portions of the Power Advisory Report.”¹ Duke Energy’s request is improper, untimely, and overly broad. Duke Energy was not prejudiced by the information it seeks to strike, as the Commission did not rely on this information in Order No. 2019-881(A). Duke Energy’s petition lends support to the request to rehear the contract term length issue as requested (in the alternative to reconsideration) by South Carolina Solar Business Alliance (“SBA”) and Johnson Development Associates, Inc. (“JDA”).² The Commission recently granted a rehearing on the contract length issue in the Dominion Energy South Carolina avoided cost proceeding.³ Finally, Duke Energy’s due process rights were not violated.

¹ Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Reconsideration of Order No. 2019-881(A) (hereinafter “Petition for Reconsideration”), Docket Nos. 2019-185-E and 2019-186-E, at p. 8.

² SACE and CCL supported SBA and JDA’s Petition for Reconsideration or Rehearing. *See* Southern Alliance for Clean Energy and South Carolina Coastal Conservation League’s Petition for Reconsideration or Rehearing, Docket Nos. 2019-185-E and 2019-186-E, at p. 2.

³ *Order on Avoided Costs and Related Issues*, Order No. 2019-847, Docket No. 2019-184-E (S.C. Pub. Serv. Comm’n. Dec. 9, 2019).

I. Duke Energy's Request to Strike Whole Sections of Power Advisory's Report is Improper and Untimely

Duke Energy's request to strike whole sections of the Independent Third Party Consultant Final Report Pursuant to South Carolina Act 62 ("Power Advisory Report" or "Report") should be denied as improper and untimely. S.C. Code of Reg. 103-829 provides that "[m]otions, except those made during hearings, will be reduced to writing and filed with the Chief Clerk at least ten (10) days prior to the commencement of a hearing." Duke Energy has never actually filed a motion to strike portions of the Power Advisory Report in this proceeding. Rather, Duke Energy has raised concerns about the inclusion of particular information in the Report and sought to limit the Commission's consideration of such information through comments responding to the Power Advisory Report and through its petition for reconsideration. Seeking to strike sections of the Report without filing a motion to strike and over two months after the Report was filed⁴—and after the Commission has issued its order on the merits—is both improper and untimely under Rule 103-829.⁵ The Power Advisory Report was filed after the hearing in this matter, but that did not preclude Duke Energy from filing a Motion to Strike earlier in this proceeding. Notably, Dominion Energy South Carolina filed a Motion to Strike the Power Advisory Report on November 8, 2019, which the Commission properly denied in its Order on December 9, 2019.

⁴ The Power Advisory Report was filed with the Commission on November 1, 2019.

⁵ It is also worth noting here that motions to strike are typically "disfavored in administrative proceedings." See, e.g., *Hearing Officer Directive*, Order No. 2015-5-H(A), Docket No. 2014-372-T (S.C. Pub. Serv. Comm'n. Jan. 22, 2015) (citing *In re ConocoPhillips Transp. Alaska, Inc., et al.*, 2011 6318621 (Reg. Comm'n. of Alaska 2011)).

II. Duke Energy's Request to Strike Whole Sections of Power Advisory's Report is Overly Broad

Rather than seeking to omit particular offending information, Duke Energy takes an overly broad approach by seeking to strike from the record entire sections of the Power Advisory Report. This request should be rejected, just as the Commission properly rejected Dominion's motion to strike the report in full.

For example, Duke Energy seeks to strike Power Advisory Report Section 4.1.1, describing the implications of 10-year PPA Contract Length in SC.⁶ Yet the majority of this section reflects discussion of the testimony presented by the parties.⁷ It is only information supported by footnotes 109, 112, and 113 that Duke Energy points to as problematic.⁸ But Duke Energy improperly seeks to strike the entire section of the Report.

Regarding Section 4.1.3, Duke Energy only points to Figure 5 and supporting footnote 115 as problematic, but again seeks to strike the entire section of Power Advisory Report.⁹ For Sections 4.4.1 and 4.4.2, Duke Energy is even less specific about what is problematic with the Report, but again seeks to strike entire sections.¹⁰ Notably, the vast majority of sections 4.4.1 and 4.4.2 involve discussion of the parties' testimony.

⁶ Petition for Reconsideration at p. 6.

⁷ Independent Third Party Consultant Final Report Pursuant to South Carolina Act 62, Docket No. 2019-185-E and 2019-186-E (hereinafter "Power Advisory Report") at p. 33 ("Contract length was an important issue in this proceeding, with a number of intervenors arguing that contract lengths longer than 10-years were essential if QFs were to secure regularly-available market-rate financing...").

⁸ Petition for Reconsideration at p. 4.

⁹ *Id.* at pp. 4, 6.

¹⁰ *Id.* at pp. 4, 6.

III. The Commission's Order Did Not Rely on the Disputed Information

Even assuming, arguendo, that certain information should not have been included in the Power Advisory Report, any such error was harmless. The Commission did not actually rely on the allegedly offensive information. On the contract term length in particular, the Commission's Order largely recites the witness testimony presented by the parties, and does not rely at all on the Power Advisory findings.¹¹ In any event, this issue was decided in Duke Energy's favor.

Regarding the 365 day commercial operation date, the Commission references Power Advisory's findings from its additional research, but the Commission's findings and conclusions are grounded in the testimony presented by the parties, including Duke Energy and SBA's witness testimony, rather than Power Advisory's finding that there are other states with even longer commercial operation windows than 365 days.¹²

Regarding required permits and land use approvals, the Commission's order does not mention the Power Advisory Report at all, including the minimal research into other states' approaches.¹³

¹¹ Order at pp. 153-67.

¹² Order at p. 151 ("This Commission notes that there appears to be at least some consensus in the testimony of Duke and SBA, i.e. with regard to the reasonability of the QF signing an FSA as a condition to forming a LEO. However, this Commission recognizes SBA's difficulty with this requirement in the absence of the provision of a System Impact Study Report from the Companies. The Commission recognizes the value of retaining the 365 day in-service requirement for certainty of commercial operation after commitment, but also recognizes that this period may be subject to interconnection delays. Accordingly, we adopt the 365 day in-service requirement following the Notice of Commitment form, but we hereby provide that the deadline may be extended to account for additional time needed by the utility to complete required interconnection facilities and network upgrades. This requirement is similar to the one adopted for Duke's Large QF PPA term.")

¹³ Order at pp. 145-46.

In sum, the Commission's Order does not appear to rely on any of the information that Duke Energy complains of. Thus, Duke Energy's draconian request to strike whole sections of the Power Advisory Report at this late date should be rejected.

IV. Duke Energy's Concerns Support a Rehearing on the Issue of Contract Term Length

Duke Energy's complaint regarding extra-record information on the issue of contract term length lends support to SBA/JDA's request for the Commission to reconsider or rehear the question of whether contracts should be longer than 10 years.¹⁴ To the extent this information should be considered by the Commission, but Duke Energy contends that it should not have been included in the Power Advisory Report, a rehearing would give the Commission the opportunity to hear that information (and any additional information and proposals) directly from the parties on rehearing. The Commission recently granted a rehearing on the contract length issue in the Dominion Energy South Carolina avoided cost proceeding.¹⁵

V. Duke Energy's Due Process Rights Have Not Been Violated

Duke Energy also argues that the Report constitutes a violation of the Companies' due process rights under South Carolina law.¹⁶ The Companies have undeniably had notice and an opportunity to respond to the Power Advisory Report, and indeed they did respond to the Report. Duke Energy's view seems to be that on issues where Power

¹⁴ See Intervenor Johnson Development Associates and South Carolina Solar Business Alliance's Petition for Clarification, Reconsideration, and/or Limited Rehearing, Docket Nos. 2019-185-E and 2019-186-E.

¹⁵ *Order on Avoided Costs and Related Issues*, Order No. 2019-847, Docket No. 2019-184-E (S.C. Pub. Serv. Comm'n. Dec. 9, 2019).

¹⁶ Petition for Reconsideration at p. 5.

Advisory disagrees with their position, whole relevant sections of their analysis should be excluded. On this Duke Energy is wrong, and seeks to undermine the Energy Freedom Act's directive that the Commission retain and use an independent, qualified consultant in this proceeding.

Conclusion

Based on the foregoing, SACE and CCL respectfully request that the Commission deny Duke Energy's petition for reconsideration as it relates to striking sections of the Independent Third Party Consultant's Final Report Pursuant to South Carolina Act 62, and deny Duke Energy's request to revise the Commission's Order accordingly. Duke Energy's request to strike whole sections of the Power Advisory Report is improper, untimely, and overly broad. Duke Energy's request to strike comes two months too late and after the Commission has issued an order on the merits. Duke Energy complains of information that the Commission did not rely upon in its Order, despite styling the request as a petition for reconsideration. As to the contract length issue, Duke Energy's petition actually lends support to the request by other intervenors to rehear this issue. Finally, Duke Energy's due process rights have not been violated. For all of these reasons, Duke Energy's request to strike portions of the Power Advisory Report at this late stage of the proceeding should be denied.

Respectfully submitted this the 22nd day of January.

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CERTIFICATE OF SERVICE

I hereby certify that the parties listed below have been served via electronic mail with a copy of the *Response to Duke Energy's Petition for Reconsideration* filed on behalf of the South Carolina Coastal Conservation League and Southern Alliance for Clean Energy.

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This 22nd day of January, 2020.

s/ Lauren Fry
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